

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. BENGE, JR.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 08-078-GMS
	:	
MICHAEL DELOY, Warden,	:	
and the ATTORNEY GENERAL OF	:	
THE STATE OF DELAWARE,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, John H. Benge, Jr., has applied for federal habeas relief, challenging his guilty plea in Superior Court to a weapons offense and two counts of criminal contempt of a protection from abuse order. The answer to the petition was originally due May 5 (D.I. 7); respondents obtained an extension of time to May 30 in which to file the answer to the petition.
2. Counsel, however, has been out of the office for several days (including May 29) in the past three weeks because of illness. As a result of those medical absences, counsel has not been able to complete the answer in the instant case. Moreover, because of those absences, counsel was not able to complete work on several other cases as anticipated. Given the backlog that

has developed, counsel anticipates that the answer in the instant case can be completed by June 18.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has “the discretion to take into account various factors such as the respondent's workload” in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time in this case.

5. Respondents submit that an extension of time to and including June 18, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 2210

May 30, 2008

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Loren C. Meyers
Deputy Attorney General

Counsel for Respondents

May 30, 2008

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and the ATTORNEY GENERAL	:	
OF THE STATE OF DELAWARE ,	:	
	:	
Respondents.	:	

ORDER

This ____ day of _____, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before June 18, 2008.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2008, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on May 30, 2008, I have caused to be delivered by the United States Postal Service the same document to the following non-registered participant:

John H. Benge, Jr.
SBI No. 494395
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

/s/ Loren C. Meyers
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820 N. French Street
Wilmington, DE 19801
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